

**2002 ENVIRONMENTAL NEGOTIATIONS COMPETITION
CONFIDENTIAL INSTRUCTIONS FOR COUNTY ATTORNEYS
ROUND 2**

The County is under substantial pressure from the Dairymen's Association and from the Mendoza Dairy to proceed quickly and to allow the Mendoza Dairy to proceed now. The County recognizes that, with respect the EIR issue—whether Mendoza needs an EIR—it has a weak legal position. An EIR is likely required.

The County has no obligation to do a Countywide EIR and can make its own determination as to the content of such an EIR (with appropriate input from the public through a scoping process). The County need not offer ORCA any concessions on the EIR, and does not believe that an EIR should or needs to include either a worker safety study or an environmental justice study. It fears that both studies are bad precedent for the County and for other jurisdictions. On the other hand, ORCA can tie up the EIR process potentially for years through litigation—assuming ORCA has the financial ability and will, making neither the County nor the Dairymen's Association happy.

The County seeks both a shortened time-frame for public comments and review for the Countywide EIR and agreement that the Mendoza Dairy can proceed without an EIR. The County does not believe that it will get ORCA to agree to either, but considers it worth asking for. (The County is not even sure that a truncated EIR process is really in the County's interest, but wants to allow Mendoza to proceed quickly). The County believes that it can complete the EIR process in one year (even without shortening the public review period), and allow Mendoza to proceed before his bank financing lapses. The County must get ORCA to agree to allow Mendoza to proceed on all other permits (including a water discharge permit and a building permit) concurrently. If Mendoza can obtain all permits, he will be able to proceed immediately upon approval of the EIR.

In its Countywide EIR, the County will agree to do a full and fair evaluation of air impacts and endangered species issues, and will evaluate mitigation as appropriate. The County is willing to so state in a settlement agreement. It is also willing to do some type of environmental justice evaluation in the Countywide EIR, based on a scope that it will determine with some public input (and that should remain less than completely defined for purposes of settlement at this time). It will discuss worker health and safety issues only to the extent that they relate to environmental hazards at dairies.

The County has two cards. It knows that ORCA is under funded, and that its attorneys likely cannot afford to engage in extensive litigation. If ORCA does not agree to allowing Mendoza to proceed with its other permit approvals (without being subject to CEQA litigation), the County will force ORCA to litigate the Mendoza case. In addition, as the carrot, the County will pay a larger attorneys fee award that it would normally consider. It will pay as much as \$25,000 in costs and \$30,000 in fees, but direct its attorneys to take a very hard line on this issue, only agreeing to pay these amounts, or anything close to them, at the end of the settlement process after ensuring that the County's control of the EIR content is largely intact, and obtaining concessions on timing. All costs and fees must be fully documented, and the County will not consider a multiplier on the fees.